

COMMITTEE AMENDMENT FORM

DATE 5/1/07

COMMITTEE CD/HR

PAGE#(S) _____

ORDINANCE# _____

SECTION(S) _____

RESOLUTION# 07-R-0581

PARAGRAPH _____

AMENDMENT: To insert Revised Exhibit (Services Agreement) and Exhibit
"B".

REVISED EXHIBIT TO 07-R-0581, April 25, 2007

State of Georgia

County of Fulton

Garden Hills Pool Services Agreement

This Services Agreement (hereinafter the "Agreement") is made and entered into this _____ day of _____, 2007, by and between the City of Atlanta, a municipal corporation of the State of Georgia (hereinafter the "City") and the Garden Hills Pool and Park Association, Inc., a Georgia 501(c)(3) Corporation (hereinafter the "Association")(hereinafter, the City and the Association may be referred to collectively as the "Parties" or singularly as the "Party").

Preamble

The Association and City entered a lease agreement on July 30, 2002 (hereinafter the "2002 Lease") to set forth the terms of their public-private partnership for the staffing and operating of the Garden Hills Pool and grounds (hereinafter the "Pool"), as well as the Garden Hills Recreation Center and Ball Field. The Pool, recreation center and ball field are owned by the City and are public recreational facilities. They are bordered by Pinetree Drive on the north, 341 Pinetree Drive on the east, 338 East Wesley Road on the south, and Rumson Road on the west.

The term of the 2002 Lease was three (3) years, with one two-year renewal option. The 2002 Lease expired on July 29, 2005 and has been continuing since that time on a month to month basis. In 2004, the City created a new standard lease for associations that manage and operate neighborhood or regional City-owned pools. All prior pool leases are being revised to be consistent with the standard lease at the time of renewal. Therefore, that portion of the 2002 Lease regarding the Pool is being replaced with this Agreement so that it is consistent with the new, standard lease. The remaining portions of the 2002 Lease, regarding the Garden Hills Recreation Center and Ball field shall remain in effect on a month to month basis until a new agreement regarding those facilities is executed by the Parties or until one or more of those portions of the Agreement are terminated in writing, with ninety (90) days written notice, whichever is earlier.

By this Agreement, the Association seeks to assist the City in the management and operation of the Pool by providing and paying for management services, lifeguards, expanded Pool hours and by organizing volunteers and community groups to preserve and improve the Pool. This shall free City resources, staff, and funds for other activities of the Department of Parks, Recreation and Cultural Affairs.

In its management and operation of the Pool, the Association shall honor all existing requirements of the City including, but not limited to: free swim periods, access for the Camp Best Friends Summer Program, current and extended hours of operation, and other guidelines

required by the City. The Association shall have the authority to enter into a management contract with a licensed, insured and experienced pool management company to oversee the day-to-day operation of the Pool, including maintaining water quality and providing certified lifeguards at staffing levels required by the City. The Association shall be solely responsible for paying for the management company out of Pool membership dues, daily fees, and other sources as set forth in this Agreement.

WITNESSETH:

WHEREAS, the City has previously leased the Pool to the Association in the 2002 Lease; and

WHEREAS, the 2002 Lease expired on July 29, 2005, and was renewable for an additional two year term; and

WHEREAS, the 2002 Lease has been successful and beneficial to the City and to the Garden Hills community; and

WHEREAS, the City is modifying all pool leases at the time of their renewal so that the new agreements are consistent with a new standard lease; and

WHEREAS, this Agreement was authorized by Resolution 06-R-____, adopted by the Atlanta City Council on _____, 2006, and approved by the Mayor on _____, 2006, and a copy of said Resolution is attached hereto marked Exhibit "A".

NOW, THEREFORE, in consideration of the mutual covenants between the parties hereto and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Association agree as follows:

A. Association Responsibilities

- 1. Management and Operations.** Association shall, at its sole cost and expense, and, subject to the terms and conditions hereinafter prescribed, staff, manage and operate the Pool in a safe, clean, healthy and orderly manner so as to offer a high quality and affordable recreational experience to the citizens and residents of the City.
 - a. Association's Right to Subcontract.** Association may elect to subcontract the staffing and operation of the Pool to a licensed and certified company specializing in the staffing and operation of public swimming pools, subject to approval by the Commissioner of the Department of Parks, Recreation, and Cultural Affairs or her/his designee (hereinafter the "Commissioner").
 - i.** Association shall incorporate a complete copy of this Agreement by attachment to each and every subcontract for the provision of staffing and operations services (hereinafter, entities to whom the Association subcontracts Pool staffing and operations services shall be referred to as

“Subcontractor” or “Subcontractors”) and shall ensure that the Subcontractor shall satisfy each and every required insurance coverage and limit, and every other material obligation set forth in this Agreement, including but not limited to certification and coursework requirements for water safety staff.

- ii. Association shall provide City with a full copy of each and every subcontract that it has entered into for the staffing and / or operation of the Pool at least thirty days prior to opening the Pool for public use.
- iii. Association shall not transfer, assign or sublease any other interest or responsibility under this Agreement without prior written consent of the City.

b. Pool Fees and Revenue. Association shall raise all funds necessary for the operation of the Pool. Association shall operate the Pool in such a manner that it shall become self-supporting from earned revenues during the term of the Agreement.

i. Association shall be permitted to perform the following:

- (A) Charge admission or usage fees per Exhibit B hereto.
- (B) Sell annual passes or memberships per Exhibit B hereto.
- (C) Sell “Association” memberships per Exhibit B hereto, provided that Association membership is not denied to any Atlanta citizen based upon where s/he lives or works.
- (D) Sell individual or group swimming lessons.
- (E) Operate food and beverage concessions.
- (F) Hold special events, and/or rent the Pool for special events, including but not limited to aquatic sports and safety related training at the Pool, provided that said special events: 1) not interfere with the City’s use of the pool for Camp Best Friends and/or other City events; 2) receive the advance written approval of the Commissioner ; and 3) receive any and all other approval required by any governmental entity having jurisdiction over the Pool.
- (G) Sell aquatic sport and safety related materials/ goods at the Pool.
- (H) Receive and expend all proceeds derived from all fees and sales as contemplated herein.

- ii. The fees established pursuant to subsection (b)(i) above shall not be exceptional or exclusionary so as to discourage public use and accessibility. The fee structure established pursuant to subsections (b)(i)(A) and (B) above shall be subject to review and approval by the City at such times as Association proposes to make material alterations or changes to any of the categories therein.
- iii. Association shall honor all current and future City-issued season swim passes in conformance with Exhibit B hereto. Season swim passes sold by the Association shall be valid at the Pool at all times or as determined by the Association.
- iv. Association shall, upon receipt of reasonable prior notification by the City, provide free admission to participants in the City's programmed swim activities, including but not limited to Camp Best Friends, provided that the admission and use of the Pool by the participants shall occur during the Pool's standard hours of operation, as set forth on Exhibit B hereto.
- v. Association shall use the revenue earned from operating and managing the Pool as follows:
 - (A) Association shall utilize earned revenues for the operation of the Pool. In the event there are excess funds that are not required for the operation of the Pool, Association shall use such excess funds for capital improvements to the Pool (which shall be subject to City's approval), Pool maintenance costs, or for the establishment of a sufficient Pool reserve fund.
 - (B) In the event that Association determines that such excess funds are not required for Pool operations, capital improvements or maintenance, said funds may be used by Association for Pool-related functions and/or programs beneficial to the Garden Hills community as deemed appropriate by the Association and as approved by the City, the latter of which shall not be unreasonably withheld.
- vi. Association shall post all fees in prominent public view.

c. Days and Hours of Pool Operation

- i. Association shall operate the Pool for public and private use and access beginning no later than the Friday preceding Memorial Day, and beginning no earlier than two weeks prior to the Friday preceding Memorial Day through and ending no earlier than Labor Day and continuing no later than two (2) weeks longer from the Friday after Labor

Day (hereinafter referred to as the "Pool Season"). Association shall not operate the Pool for private use prior to the first day that it opens and operates the Pool for public use.

- ii. On the date of execution of this Agreement, the "standard" hours of operation for times when the Atlanta Public Schools are not in session, shall be as described in Exhibit B. The Association may change the standard hours of operation for times when the Atlanta Public Schools are not in session, with prior written consent of the Commissioner.
- iii. Association shall have full discretion in determining the Pool's extended hours of operation.
- iv. Association shall have the right to allow only Association members at the Pool after 5:30 PM, and shall have full discretion in determining the days on which the Pool shall be open after 5:30 PM to Association members only. When the Association chooses to allow only Association members at the Pool, the Association shall close the Pool no earlier than 5:00 PM, and shall empty the pool and clear the pool deck of all persons by no later than 5:15 PM. The Association may restart Pool operations for Association members only no earlier than 5:30 PM.
- v. Association shall have the right to designate "free swim" periods at its discretion, but in no event shall the free swim period start prior to 10:00am, and in no event shall the Association designate less than 2.75 uninterrupted hours of free swim per each week day during the time when the Atlanta Public Schools (hereinafter "APS") are not in session.
- vi. Association shall not open the Pool to the general public during school hours prior to the end of the APS Spring Semester nor after the APS Fall Semester begins, but shall designate the first 1.5 hours that the Pool is open as a free swim period on each week day during these periods when APS is in session. The approximate time of such free swim period shall be posted in writing at the entrance to the Pool. At its discretion, Association shall have the option to open the Pool to adults, ages twenty-one (21) years and older, and accompanied Pre-Schoolers during school hours, provided that free swim shall not begin before 4:00 PM on such days.
- vii. Association shall post all hours of operation in prominent public view.
- viii. The Association may close the Pool as needed for maintenance, safety instruction, and community swim meets.

d. Pool Staffing.

- i. Association shall make certain that all Pool lifeguards and the Pool manager (hereinafter referred to collectively as the "Water Safety Staff") are certified in "Lifeguard Training", "C-PRO", "Cardiopulmonary Resuscitation", and "First Aid".
- ii. Association shall make certain that all of the Pool staff, including but not limited to the Water Safety Staff, are trained and certified on the basic operation and use of an Automatic External Defibrillator.
- iii. The Association shall make certain that the Pool manager is a "Certified Pool Operator", meaning that s/he has successfully completed all Certified Pool Operator coursework, and that all of the coursework was provided by a licensed program of instruction (i.e. American Red Cross, Ellis and Associates or the National Swimming Pool Foundation, etc.). During the Pool's hours of operation, if the Pool manager is not on site, at least one member of the Pool staff on site must be a "Certified Pool Operator", as defined above.
- iv. The Association shall provide written proof of the required staff certifications and course attendance of each member of the Pool's staff to the Department of Parks, Recreation and Cultural Affairs' Aquatics Program Manager (hereinafter referred to as the "Aquatics Manager") at least ten (10) days prior to the date that the Association opens the Pool for public use each year. For those members of the Pool's staff added after ten (10) days prior to the date that the Association opens the Pool for public use, the Association shall provide written proof of staff certifications and course attendance to the Aquatics Manager prior to allowing the potential employee to provide water safety services at the Pool.
- v. The City reserves the right to verify any and all certification and course information and to disallow any potential Pool staff member who does not meet the certification and course requirements set forth in subsections i, ii, and iii above. Association shall not open or otherwise allow the Pool to be operated until proof of the certifications and coursework of each of the Pool's staff has been made to the full and complete satisfaction of City. In the event that the City provides training(s) for any of said certification and/or course requirements, the City shall notify the Association of the training(s), and the Pool staff shall be permitted to attend. Where a member of the Pool staff attends a training, the Association shall be required to pay, or cause to be paid, any and all fees associated with her/his attending the course(s) and/or receiving the certification(s). Such payment must be received prior to the beginning of the training.

- vi. Association, and its Subcontractor if applicable, guarantee that at all times that the Pool is open for public and/or private use, any person who is operating, staffing, and/or managing the Pool shall possess the requisite certifications and coursework for doing the job that s/he is performing, as is described in subsections (d)(i), (ii), and (iii) above.
- vii. Association shall ensure that the required staffing levels for the Pool shall meet or exceed State, County and City minimums as outlined in the City's "Aquatics Manual". The Association acknowledges that it has received and is in possession of the City's Aquatics Manual.

e. Pool Standards.

- i. Association shall schedule the Pool's required Operational Certification Inspection by the appropriate County Health Department after City has filled Pool with water before its scheduled opening to the public. Further, Association shall notify City in advance so as to enable City's Swimming Pool Maintenance personnel to be in attendance during said Operational Certification Inspection.
- ii. The Association shall keep and maintain the Pool, including but not limited to the bathhouse, and any and all improvements and equipment at the Pool, in good and sanitary order and repair, and in good, safe, and presentable condition, consistent with the highest forms of business practices. This responsibility shall include but not be limited to cutting the grass located inside the Pool fence, collecting trash located within ten feet of the outside of the Pool fence, and placing the collected trash in a City-provided trash receptacle. Though the City shall have the maintenance responsibilities set forth in section B(1) below, the Association shall be responsible for making requests, either by phone or in writing, to the Department of Parks, Recreation and Cultural Affairs Work Order Desk (404.817.6813), requesting repair and/or maintenance work as needed. In the event that the Association has more than three repair and/or maintenance requests at one time, the Association must submit those requests in writing to the Work Order Desk.
- iii. Association agrees that after the swimming pool has been filled with water, it shall have the responsibility to maintain the swimming pool in a clean, sanitary condition and shall monitor the filtration and chemical purifier systems to ensure that the pool's water environment remains stable and free of bacteria, fungi, algae and microbial aquatic growth.
- iv. Association shall comply with City's sanitation procedures as contained in the Aquatics Manual, including but not limited to sanitizing the pool deck, bathhouse, and restroom facilities on a daily basis.

- v. Association shall be responsible for supplying and shall maintain a full complement of life-saving equipment near the swimming pool at all times, including but not limited to ring buoys, rescue tubes, and one standard-issue first aid kit, and an Automatic External Defibrillator.
- vi. Association shall be responsible for supplying and maintaining lifeguard chairs and umbrellas.
- vii. Association shall grant to City unrestricted access to the Pool for operational inspections, repair, maintenance and any other purposes that the City deems proper.

f. Security.

- i. Association shall staff and maintain security at the Pool as deemed necessary by the Association or the City, and said security responsibility shall begin on the date that the City or the Association begins filling the Pool with water in preparation for the swim season, and shall continue unabated until such time as the Pool is completely drained at the conclusion of the swim season. In the event that the Pool is not filled and drained annually, the security responsibility shall begin on the date when the Association uncovers the Pool in preparation for the swim season, and shall end on the date when the Association covers the Pool at the conclusion of the swim season.
- ii. Association shall keep the Pool fence, bathhouse, restrooms and utility room locked and secured at all times when the Pool is closed or otherwise not open to the public.
- iii. The Association shall provide security between the hours of 10:00 AM through 9:00 PM during the Pool Season on days when the Pool is closed to the public as deemed necessary by the City or the Association.
- iv. If conditions and situations dictate, as shall be determined by the Association after consultation with the City, the Association shall utilize the services of a security guard for the purpose of protecting against trespass during times that the Pool is closed, other than the times listed in subsection iii above.
- v. Association shall not change or re-key any locks to the swimming pool, bathhouse, restrooms, utility room or fence. In the event that locks are lost, stolen or vandalized, Association shall notify the Aquatics Manager who shall promptly provide replacements or arrange emergency repairs, as appropriate. Association shall be responsible for the replacement cost of such locks and/or the costs of the needed repairs where the circumstances leading to the need for the repair and/or replacement arise as described in section (B)(1)(c) of this Agreement.

g. Consumable Supplies.

Association shall, at its sole cost and expense, provide all chemicals and consumable supplies necessary to operate and maintain the Pool, including but not limited to: (1) Chlorine; and (2) Soda Ash.

- 2. Payment of Costs and Expenses.** Association shall pay the full and complete cost and expense of managing and operating the Pool, except where otherwise indicated in this Agreement. These costs and expenses shall include but not be limited to telephone costs, staff salaries and benefits, the cost of any and all Subcontractors or service providers as Association may elect to employ, and each and every other expense or cost arising from the management and operation of the Pool for and during the term of the Agreement.

3. Accounting

- a. Association shall maintain records of all accounts, receipts, expenditures, cash reserves, program activities and attendance figures which shall accurately reflect the detailed financial and programmatic operations of the Pool, including but not limited to the operation of concession sales. These records shall be made available to the City, during the normal business hours of the Association, upon the City's request.
- b. The Association shall deliver to the Commissioner a monthly report of attendance and revenue, including but not limited to revenue derived from concession sales.
- c. Association shall provide an Annual Financial Report (consisting of an Income Statement and Balance Sheet) and a copy of the Association's annual federal tax return to the Commissioner for each calendar year of the Agreement not later than March 1 of each year, or the date of the expiration of the Term of the Agreement, whichever is later. The Annual Financial Report shall present the Association's receipts, expenditures, assets and liabilities, and all revenue generated at and by the Pool during the most recent Pool Season and shall be approved by Association's Board of Directors. The City reserves the right to require the certification of the Annual Financial Report by a Certified Public Accountant should the city have questions or concerns about the report.
- d. Association shall provide an Annual Performance Report to the Commissioner for each calendar year of the Agreement not later than sixty (60) days after the end of each Pool Season. The Performance Report shall present the Pool's attendance numbers and any programs or special events sponsored by Association.

4. Emergencies

- a. Association shall use the Emergency 911 number to summon Police, Fire or Emergency Medical personnel should events or situations dictate. After summoning emergency personnel, Association shall immediately notify the Aquatics Manager.
- b. Association shall contact the City's Work Order Desk (404.817.6813) to report system malfunctions, break-ins and any other damage to the any part of the Pool that requires emergency repair service. The City shall undertake emergency repairs to the Pool in a prompt and timely manner, subject however, to City's backlog of emergency repairs required at other City-owned swimming pools. City's procedure shall be to respond to emergency calls in the order by which the emergency requests are received.
- c. Association shall provide the Commissioner and the Aquatics Program Manager with the names and telephone numbers of no less than three (3) Association officials who can be contacted by City at night and on weekends and holidays in the event that emergencies arise at the Pool.
- d. Association shall comply with City's emergency procedures as contained in the Aquatics Manual.

B. City Responsibilities

1. Maintenance and Repair

- a. City, at its sole cost and expense, shall maintain the Pool in proper operating condition, and shall bear all maintenance costs, including capital repair costs, unless excess funds are generated pursuant to section A1bvA above. The City's maintenance responsibilities shall include but not be limited to maintenance and repair of the swimming pool, bathhouse, restrooms, utility spaces, fence, gates, interior and exterior lights, doors, windows, plumbing, electrical system, filtration and chemical purification systems, pumps, motors, fans and blowers.
- b. The City shall charge, and the Association shall pay the City, the full cost of labor, parts and materials for repairs or replacement of plumbing, filtration and purification components in the event that the City determines that damages resulted from the improper operation of said systems by Association, Association's employees or Association's Subcontractor.
- c. The City shall charge, and the Association shall pay the City, the full cost of labor, parts and materials for repairs or replacement of other items located at the Pool if the City determines that the damage necessitating the repair or replacement resulted from mismanagement, negligence, gross negligence, or

intentional bad acts by the Association, Association's employees, or Association's Subcontractor.

- d. The Association shall be responsible for making requests for Pool maintenance and/or repair to the Department of Parks, Recreation and Cultural Affairs' Work Order Desk, pursuant to section A(1)(e)(ii) above. The City will respond to such maintenance and repair requests in a reasonable manner through its work order system.
- e. The City shall undertake emergency repairs as is set forth in section A(4)(b) above.

2. Seasonal Preparation

- a. At the request of the Association, the City shall, at its sole cost and expense, have the Pool filled with water, fully functional and otherwise prepared for service by no later than (10) days prior to the date that the Association opens the Pool for public use each year. The responsibility for scheduling the appropriate County Health Department's inspection for the Pool's Operational Certification shall rest with Association.
- b. City shall, at its sole cost and expense, provide the following equipment for Association's use:
 - i. Trash receptacles.
 - ii. Full complement of lifeguard stands.
- c. City shall, at the conclusion of the swim season, winterize the Pool so as to protect internal plumbing and filtration systems from freeze damage.

3. Utilities. City shall, at its sole cost and expense, provide the following utilities at the Pool: (1) Electricity; (2) Water; (3) Sewer; and (4) Trash pickup from City provided trash receptacles.

4. Regulatory Signage. City shall, at its sole cost and expense, install standard regulatory signage at the Pool regarding rules and regulations. Such signs shall be written in English and Spanish where the City has adequate funds available for such signage. Association shall be responsible for installing and paying for all other signage, including but not limited to signs regarding fees and hours of operation.

5. City's Use of Pool

- a. The City shall give a minimum 7-days prior notice to Association of City's intended use of Pool involving ten (10) or more Camp Best Friends Summer Program participants. City shall have the option of satisfying this requirement by providing Association with a schedule of planned visits to the Pool by Camp Best Friends Summer Program sites at least seven (7) days prior to the start of the Pool Season. On those occasions where Camp Best Friends brings participants to the Pool, the participants shall be accompanied by camp counselor(s) that shall supervise the participants' behavior in and out of the water. Such counselors shall not be deemed Pool staff or Water Safety Staff, and shall not be responsible for the Pool safety of the participants. All Pool safety and Lifeguard responsibilities shall belong to the Association and its Subcontractors where applicable.
- b. City shall ensure that Camp Best Friends Summer Program participants visiting the Pool shall be accompanied by a sufficient number of Summer Camp Counselors.

C. Term

The City hereby leases the Pool to the Association for a term of five (5) years from the date of this Agreement, as written on the first page hereof. This Agreement may be renewed for one additional two (2) -year term upon mutual agreement between the parties hereto, and upon adoption of appropriate legislation by the Atlanta City Council and approval by the Mayor. Association shall submit written notice to the Commissioner of such intent to renew no less than ninety (90) calendar days prior to the expiration of the term.

D. Improvements

1. Capital Improvements

- a. Capital Improvements are defined as facility improvements or new system installations having a minimum value of \$20,000.00 and a useful lifetime of no less than ten (10) years.
- b. The Association has the authority to make capital improvements to the Pool at its own expense upon approval of those improvements by the Commissioner. All such improvements shall become the property of the City upon their installation and/or completion.
- c. The Association may request that the City make and pay for Capital Improvements to the Pool. In a non-Emergency situation, Association's

requested Capital Improvements shall first be incorporated into the City's Comprehensive Development Plan (CDP). Following the CDP's adoption by the Atlanta City Council and approval by the Mayor, said improvements shall be incorporated into the City's Capital Improvement Plan (CIP).

- d. Capital improvement projects that are incorporated into the CIP shall be scheduled for implementation based on the availability of funding and previously scheduled projects of higher priority or of greater urgency.

2. Facility Improvements (Non-Capital)

- a. Facility Improvements are defined as those improvements to the Pool that do not qualify as Capital Improvements.
- b. The Association has the authority to make Facility Improvements to the Pool at its own expense upon approval of those improvements by the Commissioner. All such improvements shall become the property of the City upon their installation and/or completion.
- c. The Association may request that the City make and pay for Facility Improvements to the Pool. In a non-Emergency situation, Facility Improvements requested of the City by the Association shall be subject to City's final approval or disapproval based on the City's policies and the availability of funding.
- d. The Association has the right to make capital improvements to the Pool with the approval of the Commissioner of the Department of Parks, Recreation, and Cultural Affairs.

E. Insurance and Bonding Requirements

The following general requirements apply to any and all work under this Agreement. Compliance is required of the Association and Subcontractors of any tier.

1. Evidence of Insurance Required Before Work Begins - Neither Association nor Subcontractor shall commence any work of any kind under this Agreement until all Insurance and Bond requirements contained in this Agreement shall have been complied with as outlined below and until evidence of such compliance satisfactory to the City as to form and content has been filed with the City. The Acord Certificate of Insurance or a pre-approved substitute is the required form in all cases where reference is made to a Certificate of Insurance or an approved substitute.
2. Minimum Financial Security Requirements - Any and all companies providing insurance required by this Agreement must meet certain minimum financial security requirements set forth below. These requirements conform to the ratings published by

A.M. Best & Co. in the current Best's Key Rating Guide. The ratings for each company must be indicated on the Certificate of Insurance form.

3. For all contracts, regardless of size, companies providing Insurance or Bonds under this Agreement must have a current:
 - a. Best's Rating not less than A-VII and current
 - b. Best's Financial Size Category not less than Class IX.
 - c. Companies must be authorized to conduct and transact insurance contracts by the Insurance Commissioner, State of Georgia.

If the issuing company does not meet these minimum requirements, or for any other reason shall be or become unsatisfactory to the City, written notification shall be mailed by the City to the Association who shall promptly obtain a new policy or bond issued by an insurer acceptable to the City, and shall submit evidence of the same to the City as required herein.

4. Upon failure of the Association to furnish, deliver and maintain such insurance or bonds as herein provided, this Agreement, at the election of the City, may be declared forthwith suspended, discontinued or terminated. Failure of the Association to take out and/or to maintain any required insurance or bonds shall not relieve the Association from any liability under the Agreement, nor shall these requirements be construed to conflict with the obligation of the Association concerning indemnification.
5. Insurance Required For Duration of Agreement - Any and all Insurance and Bonds required by this Agreement shall be maintained during the entire length of this Agreement, including any extensions thereto.
6. Mandatory 30-Day Notice of Cancellation or Material Change

This provision applies to insurance under which the City is an additional insured and all bonds required under this Agreement. City must, without exception, be given not less than thirty (30) days prior written notice of the proposed cancellation of any insurance or bonds required by this Agreement for other than non-payment of premium or for any material change in any insurance or bond. City must, without exception, be given not less than ten (10) days prior written notice of the proposed cancellation of any insurance or bonds required by this Agreement due to non-payment of premium. Confirmation of these mandatory notice requirements must appear on the certificate of insurance and all bonds provided to the City by the Association as evidence of its compliance with this Agreement.

City will accept no documentation from the Association that imposes conditions on the insurance and bonding requirements contained in this Agreement or required by

applicable law. City will also not accept any certificate of insurance that contains language similar in intent to the following: "Should any of the above-described policies be cancelled before the expiration date thereof, the issuing insurer will endeavor to mail _____ days written notice to the certificate holder named to the left, but failure to do so shall impose no obligation or liability of any kind upon the insurer, its agents or representative."

The Association must also submit to the City for each policy of insurance required to be provided pursuant to this Agreement, an Endorsement evidencing the City's rights to unconditional notice of a policy cancellation in accordance with this Agreement, if the underlying policy does not already contain such compliant cancellation notice requirements and an endorsement is required to amend them to comply with this Agreement.

All cancellation notices should be sent to the attention of Risk Management at 68 Mitchell Street, Suite, 9100, Atlanta, Georgia 30303.

7. The City of Atlanta shall be covered as Additional Insured under any and all Insurance and Bonds required by this Agreement, and such insurance shall be primary with respect to the Additional Insured. Confirmation of this shall appear on the certificate of insurance and any and all applicable Bonds and Insurance policies. Attached to each certificate of insurance shall be a copy of the Additional Insured Endorsement, with the exception of Workers' Compensation, Professional Liability Insurance or Payment and Performance Bonds.
8. Mandatory Subcontractor Compliance - Association shall incorporate a copy of these Insurance, Bond requirements in each and every contract with each and every Sub-Contractor of any tier, and shall require each and every Sub-Contractor of any tier to comply with all such requirements. Association agrees that if for any reason Sub-Contractors of any tier fail to procure and maintain Insurance and Bonds as required, all such required Insurance and Bonds shall be procured and maintained by Association at Association's sole cost and expense.
9. Authorizing and Licensing of Agent - Each and every agent acting as Authorized Representative on behalf of a Company affording coverage under this Agreement shall warrant when signing the Acord Certificate of Insurance that specific authorization has been granted by the Companies for the agent to bind coverage as required and to execute the Acord Certificate of Insurance as evidence of such coverage. City of Atlanta coverage requirements may be broader than the original policies, these requirements have been conveyed to the Companies for these terms and conditions. In addition, each and every agent shall warrant when signing the Acord Certificate of Insurance that the agent is licensed to do business in the State of Georgia and that the Company or Companies are currently in good standing in the State of Georgia.
10. Workers' Compensation and Employer's Liability Insurance - The Association shall procure and maintain Workers' Compensation and Employer's Liability Insurance in the

following limits, such insurance to cover each and every employee who is or may be engaged in work under the Agreement:

<u>Workers' Compensation</u>	<u>Statutory</u>
<u>Employer's Liability</u>	
Bodily Injury by Accident	<u>\$ 100,000</u> each accident
Bodily Injury by Disease	<u>\$ 100,000</u> each employee
Bodily Injury by Disease	<u>\$ 500,000</u> policy limit

11. General Liability Insurance - The Association shall procure and maintain General Liability Insurance in an amount not less than \$ 1,000,000 per occurrence. The following specific extensions of coverage shall be provided and shall be indicated on the Certificate of Insurance:

- a. Comprehensive Form
- b. Personal Injury
- c. Broad Form Property Damage
- d. Premises – Operations

12. Automobile Liability Insurance - The Association shall procure and maintain. Automobile Liability Insurance with not less than 500,000 combined single limit. The following extensions of coverage shall be provided and shall be indicated on the Certificate of Insurance:

- a. Comprehensive Form
- b. Owned, Hired, Leased and Non-owned vehicles to be covered.

In the event the Association does not own any automobiles in the corporate name, non-owned vehicle coverage shall apply and must be endorsed on either the Association's personal automobile policy or the General Liability coverage required under this Agreement.

13. Property Insurance - The Association shall procure and maintain for the life of this Agreement an All Risk Property Insurance, including Flood coverage for the building located at the site of the Pool. Flood coverage is not required for the swimming pool. The policy must name the City of Atlanta as a Named Insured . The policy will provide for full replacement cost of the physical structures and other real or personal property comprising the facility.

14. The cancellation of any policy of insurance required by this Agreement shall meet the requirements of notice under the laws of the State of Georgia as presently set forth in the Georgia Code.

F. Hold Harmless Agreement

In addition to its agreement to obtain and maintain insurance, as set forth hereinabove, the Association agrees to indemnify and hold harmless the City of Atlanta, its officers, agents and employees, from: 1) any and all losses, expenses, demands, damages, and claims against the City, and/or its officers, agents and/or employees, which arise out of any intentional bad act or omission, or out of any negligent act or omission of the Association, or of any contractor or subcontractor of the Association, or of any of the Association's officers, agents, or employees; and 2) any and all losses, expenses, demands, damages, and claims which result from any condition created or maintained by the Association, or by any contractor or subcontractor of the Association, or by any of the Association's officers, agents, or employees, which condition was not specified to be created or maintained by this Agreement. The Association further agrees that this agreement to indemnify and hold harmless the City of Atlanta, its officers, agents and employees shall not be limited to the limits or terms of the liability insurance required under this Agreement. Lastly, Association shall incorporate a copy of these Hold Harmless requirements in each and every contract with each and every contractor and subcontractor of any tier, except that the name of the contractor or subcontractor shall be substituted for the word "Association".

G. Non-Discrimination

1. During the performance of this Agreement, the Association agrees to comply with all provisions of Sections 2-1200 and 2-1414 of the Atlanta Code of Ordinances. Furthermore, by execution of this Agreement, the Association certifies that, during the Term of this Agreement, it shall be bound by and comply with the following statement:

"We the supplier of goods, materials, equipment or services covered by this Agreement shall not discriminate against any volunteer, employee, or applicant for volunteerism or employment, because of the race, creed, color, religion, sex, national origin, marital status, domestic relationship status, familial status, political affiliation, parental status, age, physical handicap, sexual orientation, or gender identity of such person."

As used here, the words 'shall not discriminate' shall mean and include without limitation the following:

Recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated.

The Association agrees to and shall post in conspicuous places, available to employees and applicants for employment the provisions of the non-discrimination statement above, and the other provisions set forth in this Non-discrimination section, section G, of the Agreement.

2. The Association shall in all solicitation or advertisement of employees, placed by or on behalf of the Association, state that all qualified applicants will receive consideration for the employment without regard to race, creed, color, religion, sex, national origin, marital status, domestic relationship status, familial status, political affiliation, parental status, age, physical handicap, sexual orientation, or gender identity.
3. The Association shall take such action with respect to any contractor or subcontractor as the City may direct as a means of enforcing the provisions herein, including penalties and sanctions for noncompliance; provided, however, that in the event the Association becomes involved in or is threatened with litigation as a result of such direction by the City, the City will enter into such litigation as is necessary to protect the interest of the City and to effectuate the Equal Employment Opportunity Program of the City of Atlanta.
4. The Association shall include the provisions of this non-discrimination section, section G, of the Agreement in every contract and subcontract so that such provisions will be binding upon each contractor and subcontractor.
5. A finding that a refusal by the Association or contractor or subcontractor to comply with any portion of this non-discrimination section, section G, of the Agreement, as herein provided and described, may subject the offending party to cancellation of the Agreement or contract or subcontract as appropriate.

H. Jurisdiction

This Agreement is made and entered into in Fulton County, Georgia. In the event of any dispute, disagreement or action arising under this Agreement, the proper place for determination of such dispute, disagreement or legal action is within the jurisdiction of Fulton County, Georgia and based upon the laws of the State of Georgia.

I. Access

Association shall grant to City unrestricted access to the Pool for operational inspections, repair, maintenance and other purposes as from time-to-time may become necessary.

J. Notice

1. All notices, demands, requests or replies provided for, permitted or appropriate under this Agreement shall be in writing and may be delivered by any one of the following methods:

- a. By personal delivery;
 - b. By deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid to the addresses stated below;
 - c. By prepaid telegram; or
 - d. By deposit with an overnight express delivery service.
2. Notice deposited with the United States Postal Service, telegram or express delivery service in the manner described above shall be deemed effective one (1) business day after deposit therein. Notice by personal delivery shall be deemed effective at the time of personal delivery.
3. For purposes of notice, demand, request, reply or repayment, the address of City shall be:

The Commissioner
City of Atlanta, Department of Parks, Recreation and
Cultural Affairs
City Hall East, Suite 800
675 Ponce de Leon Avenue, NE
Atlanta, Georgia 30308

The address of the Association shall be:

North Atlanta Swim Association, Inc.
c/o The President
P.O. Box 11602
Atlanta, Georgia 30355

K. Termination

Either party to this Agreement shall have the right to terminate the Agreement with or without cause by giving, one unto the other, at least thirty (30) days notice of intent to terminate, provided that in no event shall termination without cause result in the termination's occurring between March 1 through September 15 of any year of the Term of this Agreement. Termination with cause may occur at anytime pursuant to the provisions set forth in section L below.

L. Default

1. Either Party shall be in default under this Agreement if the Party fails to keep, perform, observe, or comply with any of the terms, conditions, covenants or requirements set forth in this Agreement, and does not cure such failure within thirty (30) days after receipt of written notice of such failure from the Commissioner or the Association President, as appropriate, or if such failure cannot be cured within said thirty (30) day period, the Party

does not commence such cure within that period and thereafter diligently pursue same to completion. If default is made by either Party, as described in this section L, the other Party may terminate this Agreement upon written notice to the defaulting Party.

2. In the event of default of any of the terms and conditions hereunder, including, but not limited to the obligations placed upon the Association, or upon the termination of this Agreement under any of the other terms hereof, Association agrees to surrender possession of the Pool immediately and hereby grants to City the right of possession thereof, with or without process of law, and the right to expel and to remove Association, its contractor(s) and/or subcontractor(s) or any other person or party who may be occupying the Pool or any part thereof under claim of right by, through or under Association, and City may repossess itself of the Pool as its estate, but such entry of the Pool by City shall not constitute a trespass or forcible entry or detainer.

M. Entire Agreement

This Agreement represents the entire and integrated Agreement between the Parties and may be amended only by written instrument signed by both Parties, and said instrument must be authorized by appropriate City legislation.

N. Liability

It is mutually agreed between the Parties hereto that this Agreement shall not become binding on the Association or the City, and neither the Association nor the City shall incur any liability upon the same, until said Agreement has been fully executed by the Mayor and delivered to the Association.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals the day and year first written above.

ATTEST:

CITY OF ATLANTA:

Municipal Clerk

Mayor

(Seal)

(Signature lines on next page)

ATTEST:

GARDEN HILLS POOL AND PARK
ASSOCIATION, INC.:

Corporate Secretary

President (Seal)

APPROVED:

APPROVED:

Commissioner, Department of Parks,
Recreation and Cultural Affairs

Director, Bureau of Purchasing and
Real Estate

APPROVED AS TO FORM:

APPROVED:

City Attorney

Chief Financial Officer

APPROVED:

Chief Operating Officer

EXHIBIT B

Admission

A. City Fees

Children (5 & under)	Free
Youth (6-16)	\$1.00
Adults	\$2.00
Seniors over 50	\$1.00

Membership

A. City Membership

Current memberships valid daily between 1:30 pm – 5:00 pm Monday – Friday 12 noon to 5:00 pm Saturday and Sunday.	
Youth (resident)	\$45.00
Youth (non-resident)	\$65.00
Senior (resident)	\$45.00
Senior (non-resident)	\$65.00
Adult (resident)	\$90.00
Adult (non-resident)	\$165.00
Memberships available at Office of Recreation, City Hall East	

B. Association Daily admission

Children	\$2.00
Adults	\$3.00

B. Association

Subscription Rates:	
First Family Member	\$110
Each additional family member	\$60
Family maximum	\$310

Hours of Operation:

While school is open:

Sunday	Noon – 7:30 p.m.
Monday – Thursday	4 p.m. – 7:30 p.m.
Friday	4 p.m. – 8:00 p.m.
Saturday	Noon – 8:00 p. m.

While school is closed:

Sunday – Thursday	10:30 a. m. – 8:30 p.m.
Friday – Saturday	10:30 a. m. – 9:30 p.m.

	Mon	Tue	Wed	Thur	Fri	Sat	Sun
10:30 am	Free Swim	Free Swim	Free Swim	Free Swim	Free Swim	Association	Association
11:00 am	Free Swim	Free Swim	Free Swim	Free Swim	Free Swim	Association	Association
11:30 am	Free Swim	Free Swim	Free Swim	Free Swim	Free Swim	Association	Association
12 noon	Free Swim	Free Swim	Free Swim	Free Swim	Free Swim	Public	Public
12:30pm	Free Swim	Free Swim	Free Swim	Free Swim	Free Swim	Public	Public
1:00 pm	Free Swim	Free Swim	Free Swim	Free Swim	Free Swim	Public	Public
1:30 pm	Free Swim	Free Swim	Free Swim	Free Swim	Free Swim	Public	Public
2:00 pm	Public	Public	Public	Public	Public	Public	Public
2:30 pm	Public	Public	Public	Public	Public	Public	Public
3:00 pm	Public	Public	Public	Public	Public	Public	Public
3:30 pm	Public	Public	Public	Public	Public	Public	Public
4:00 pm	Public	Public	Public	Public	Public	Public	Public
4:30 pm	Transition	Transition	Transition	Transition	Transition	Transition	Transition
5:00 pm	Association	Association	Association	Association	Association	Association	Association
5:30 pm	Association	Association	Association	Association	Association	Association	Association
6:00 pm	Association	Association	Association	Association	Association	Association	Association
6:30 pm	Association	Association	Association	Association	Association	Association	Association
7:00 pm	Association	Association	Association	Association	Association	Association	Association
7:30 pm	Association	Association	Association	Association	Association	Association	Association
8:00 pm	Association	Association	Association	Association	Association	Association	Association
8:30 pm	Association	Association	Association	Association	Association	Association	Association
9:00 pm					Association	Association	
9:30 pm					Association	Association	

- Free Swim hours Monday – Friday are subject to change at the discretion of Association. However, under no circumstance shall “Free Swim” be less than City’s standard of 2.75 hours per day.

Free Swim

The hours that the Garden Hills Swimming Pool is open to the public at no fee.

Public

The hours that the pool is open to the public at the standard City of Atlanta rates.

Transition

The half – an – hour time period during which time no one is allowed in the pool, and after which the pool is open to association members only.

Assoc.

The time period which the pool is open to association members and their guest only.

Camps

Camps such as “Camp Best Friends” are scheduled separately and usually during free swim and public times.